



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 203487

PRELIMINARY RECITALS

Pursuant to a petition filed on October 18, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Human Services Department regarding Medical Assistance (MA), a hearing was held on December 15, 2021, by telephone. The hearing was first scheduled for November 10, 2021 but rescheduled at the request of Petitioner who advised the administrative law judge that she would like additional time to try to reach informal resolution with the agency. A related appeal concerning a BadgerCare Plus overpayment (DHA Case No. FOP-203486) was heard at the same time. A separate decision was previously issued regarding that matter.

The issue for determination is whether Petitioner was overpaid BadgerCare Plus benefits in the amount of \$793 for July 2018 through September 2018 (claim no. [REDACTED]) and \$121 for December 2018 (claim no. [REDACTED]) due to client error.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Rock County Human Services Department
1900 Center Avenue
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) and her spouse, [REDACTED], are residents of Rock County who received BadgerCare Plus from at least November 2017 through November 2019. Their assistance group included Petitioner, [REDACTED], and their two minor children.
2. On January 2, 2018, Petitioner completed a FoodShare (FS) interview with the agency by telephone. She reported that she and her spouse were self-employed and had no other income. She subsequently submitted requested verification of the household's self-employment income.
3. On January 9, 2018, the agency mailed Petitioner an "About Your Benefits" notice which stated, that she, her spouse, and two children were eligible for BCP as of November 2017 and FS as of December 2017; that the agency had the following monthly income "on file for [Petitioner's] household": \$569.41 in self-employment income attributed to Petitioner and \$1,358.50 attributed to her spouse (i.e., \$1,927.91 total); and that Petitioner must comply with the following income you must report it by the 10th day of the next month."
4. On April 30, 2018, Petitioner reported a change in self-employment income and on May 7, 2018 provided Self Employment Income Report Forms to verify the household's January through May 2018 self-employment income.
5. On May 14, 2018, the agency mailed Petitioner an "About Your Benefits" notice which stated that there was no change to her household's BCP eligibility and that the household's FS benefit would increase as of June 1, 2018; that the agency had the following monthly income "on file for [Petitioner's] household": \$629.69 in self-employment income attributed to Petitioner and \$891.85 attributed to her spouse (i.e., \$1,521.56 total); and that Petitioner must comply with the following income reporting requirement: "If your household's total monthly income (before taxes) goes over \$2,665, you must report it by the 10th day of the next month."
6. On October 19, 2018, Petitioner completed an interview to renew her FS benefit. At that time, she reported that her and her spouse's self-employment income had ended. During the FS renewal process, an agency worker noted that there was a SWICA wage match report indicating that Petitioner had been employed by [REDACTED] / [REDACTED] since the second calendar quarter of 2018 and requested verification of that employment which Petitioner provided on or about October 26, 2018.
7. Based on the verification that Petitioner provided in October 2018 of her earned income with [REDACTED] / [REDACTED] and her report that the household's self-employment income had ended, the agency calculated the household's gross income to be \$921.80 per week (i.e., \$3,687.20 every four weeks). As a result, Petitioner and her spouse were found to be eligible for continued BCP through an earned income extension and assessed an \$181 premium as of December 2018.
8. Petitioner's monthly gross wages from [REDACTED] / [REDACTED] in 2018 were as follows: \$2,400 in May 2018; \$2,345 in June 2018; \$2,105 in July 2018; \$3,700 in August 2018; \$3,360 in September 2018; \$4,572.50 in October 2018; \$4,592.50 in November 2018; and \$4,717.50 in December 2018.
9. Petitioner also had a small amount of earned income from [REDACTED] during the fourth calendar quarter of 2018. That income averaged \$21.67 per month during that quarter.
10. Petitioner's total household income after allowable self-employment deductions and pre-tax deductions was \$3,317.23 in July 2018, \$4,832.48 in August 2018, \$4,509.48 in September 2018, and \$4,503.29 in December 2018.
11. In February 2019, the agency requested and received documentation of Petitioner's monthly income from [REDACTED] for the time period May 2018 through January 2019 as part of an overpayment investigation of which Petitioner was advised, found that Petitioner had not timely

reported that income after beginning her job in May 2018, and made an overpayment referral for the time period July 2018 through January 2019.

12. Despite receiving documentation from [REDACTED] in February 2019 that showed that Petitioner's household income had exceeded 100% FPL as of May 2018, the agency did not amend the date the household entered into an extension from December 2018 to July 2018. As a result of this agency oversight, Petitioner's household continued receiving BCP from July 2019 through November 2019.
13. On October 5, 2021, the agency sent Petitioner and her spouse manually-generated notices and worksheets informing them that they had been overpaid \$793 in BCP from July through September 2018; \$4,059.05 from July 2019 through November 2019; and \$121 for December 2018 as a result of failing to timely report increased household income and that they were liable to repay that sum.
14. Petitioner filed a timely appeal.
15. The agency reviewed Petitioner's case after she filed an appeal and determined that the \$4,059.05 overpayment claim for July 2019 through November 2019 had been due to agency error and that Petitioner and her spouse were therefore not liable to repay that sum.
16. The amount of the overpayment for July through September 2018 and December 2018 was arrived at by determining monthly premiums Petitioner's household would have been assessed had the agency budgeted the household's actual income during those months.

DISCUSSION

The recovery of overpaid BadgerCare Plus benefits is authorized by Wis. Stat., §49.497(1) as follows:

- (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:
 1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
 2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
 3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements
- (b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

See also, *BCP Eligibility Handbook (BCP Handbook)*, §§28.1 – 28.3.

Under BCP rules applicable to Petitioner during the overpayment period, the income limit for caretaker parents was 100% of the federal poverty level (FPL); however, caretaker parents whose income exceeded that amount could retain eligibility for up to 12 months—called a BCP extension—under certain circumstances. *Id.* at §§16.1 and 18.2. Prior to January 1, 2019, caretaker parents whose income exceeded 100% FPL were required to pay a premium. *Id.* at § 19.1, Release 18-02 and DMS Operations Memo 18-47. And, that premium was calculated based on a sliding scale. *Id.* at §19.2 and Table 48.1.2., Release 18-02. 100% FPL for a four-person household in 2018 was \$2,091.67.

The *BCP Handbook* further provides that if an overpayment is caused by a failure to report increased income and the household would have remained eligible for BCP but with increased premiums, the overpayment amount is the lesser of the following: (1) the difference between any premiums originally paid and the correct premiums based on the actual income, and (2) the amount of claims and HMO capitation payments paid by the state on behalf of the benefit recipient during the months in question. See *BCP Handbook* §28.4.2.

In a fair hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. To meet its burden, a preponderance of the evidence in the record must support the agency's action. This means that the evidence must show that it is more likely than not that the agency's overpayment finding was proper. Generally speaking, to successfully establish an overpayment claim, the agency needs to present: a copy of a notice and overpayment computations that were sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused the issuance of FoodShare benefits for which the client was not otherwise eligible; documentation of the benefits actually paid; Case Comments corroborating the facts and timeline of the original reporting; subsequent discovery; client contacts, etc.

The agency offered CARES case comments showing that there is no notation of a contact from Petitioner at any time prior to October 2018 regarding her employment with [REDACTED]. The agency's position is that income consortium workers are instructed to enter case notes to document all contacts received from benefit recipients regarding income increases and that the absence of such a case note demonstrates that Petitioner did not call the agency. The absence of a case note is relevant evidence in this type of overpayment case but such evidence may be effectively rebutted by a petitioner who is able to offer detailed, credible testimony or otherwise persuasive evidence demonstrating that they did, in fact, timely report an increase in income to the agency.

Petitioner, who did not dispute either that her household income increased above the relevant income reporting requirements starting in May 2018 nor that she received benefits to which she was not eligible, testified that "[the agency's conclusion that she failed to report that] did not sit well with her" for a number of reasons and further argued that the overpayment was not due to client error and that she should therefore not have to repay it. Petitioner testified that she knows she reported to the agency after she began working for [REDACTED] on May 7, 2018 because, at that time, she realized her \$20 per hour wage would result in her becoming ineligible for benefits. Petitioner did not offer any documents to corroborate her assertion that she contacted the agency regarding her new employment by June 10, 2018 or any detail regarding the manner of contact. I also note that Petitioner's household FS allotment actually increased in June 2018 and there is no evidence in the record indicating that Petitioner contacted the agency to find out why that had occurred despite her stated belief that her benefits would be ending following her new employment.

Petitioner argued that the agency's delay in establishing the overpayment claim made it difficult to remember events clearly and made it difficult to gather relevant documentation. Her frustration with the delay in the establishment of the overpayment claim is understandable and her contention that such a delay may adversely affect a beneficiary's ability to effectively defend against an overpayment claim is

not without merit. However, the policies effective on the date that the overpayment claim in this case was established did not identify any particular “lookback period” for the agency when investigating overpayments.

Petitioner also argued that the agency acknowledged making an error when it established the largest of the three BCP overpayment claims (i.e., claim no. [REDACTED] in the amount of \$4,059.05 for July 2019 through November 2019) and that the agency thus has shown itself to be error-prone. The evidence in the record however did not demonstrate to me that the agency made errors resulting in the two earlier and smaller overpayment claims.

For the reasons set forth above and based on a totality of the evidence in the record, I find it is more likely than not that Petitioner was overpaid BCP benefits from July 2018 through September 2018 and again in December 2018 due to her failure to timely report that her household income increased in excess of the income reporting requirement as of May 2018 upon beginning a new job at [REDACTED].

CONCLUSIONS OF LAW

The agency correctly determined that Petitioner was overpaid BadgerCare Plus benefits in the amount of \$793 for July 2018 through September 2018 (claim no. [REDACTED]) and \$121 for December 2018 (claim no. [REDACTED]) due to client error; accordingly, Petitioner is liable to repay those benefits.

THEREFORE, it is

ORDERED

The petitioner’s appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

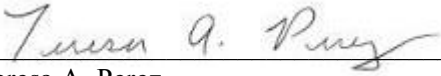
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

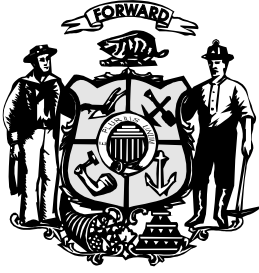
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of February, 2022

\s 

Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 9, 2022.

Rock Cty Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability